

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

FRIENDS OF THE SAN JUANS, FRIENDS )  
OF THE EARTH, and EVERGREEN ) Case No. 2:21-cv-01299  
ISLANDS, )  
Plaintiffs, ) COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF  
v. )  
UNITED STATES ARMY CORPS OF )  
ENGINEERS, )  
Defendant. )

INTRODUCTION

1. Plaintiffs Friends of the San Juans, Friends of the Earth, and Evergreen Islands bring this unreasonable delay action to compel the United States Army Corps of Engineers (Army Corps) to complete a court-ordered National Environmental Policy Act (NEPA) Environmental Impact Statement (EIS) and Record of Decision (ROD) with respect to the construction of the North Wing of British Petroleum's (BP) Cherry Point Marine Terminal dock (BP Dock or North Wing), located in Blaine, Washington. Furthermore, the Plaintiffs seek the Army Corps' determination whether this action violated the "Magnuson Amendment" (33 U.S.C. § 476).

1           2.       Built in 1971 with a capacity to handle 100,000 barrels per day of crude oil,  
2 primarily from Alaska, BP's Cherry Point refinery can now process approximately 250,000  
3 barrels of crude oil per day on average. It is the largest refinery in Washington State and the  
4 third-largest refinery on the U.S. West Coast. While the refinery receives some crude by rail and  
5 pipeline, most of the crude oil processed at the refinery is delivered by tankers from throughout  
6 the world that transit the Salish Sea to the refinery's Cherry Point location. The North Wing, an  
7 addition to BP's existing oil refinery dock that doubled the refinery's berthing capacity, has been  
8 operational since 2001.

9           3.       In 1992, BP applied to the Army Corps for a Rivers and Harbors Act Section 10  
10 permit to construct the North Wing. Plaintiffs and many others, including the U.S. Fish and  
11 Wildlife Service, Lummi Nation, and the Nooksack Tribe, raised concerns about the increase in  
12 tanker traffic associated with a dock expansion, increased risk of oil spills, and impacts on  
13 endangered species. Despite these concerns, the Army Corps determined that an EIS was not  
14 necessary and granted the permit. Environmental groups tried to persuade the Army Corps to  
15 reopen the permit and complete an EIS to assess the cumulative impacts that the BP Dock would  
16 have on vessel traffic and oil spill risk, and to determine whether the permit violated the  
17 Magnuson Amendment. In November 2000, several environmental groups filed a lawsuit  
18 against the Army Corps after the Army Corps declined to reconsider or condition the permit.  
19

20           4.       In 2005, several years after the dock became operational, this Court ordered the  
21 Army Corps to prepare the BP Dock EIS and to issue a determination as to whether the dock  
22 expansion violates the Magnuson Amendment, which regulates permits for oil transport  
23 terminals on Puget Sound. *Ocean Advocates v. U.S. Army Corps of Eng'rs*, No. C00-1971L,  
24 2005 WL 2035053 (W.D. Wash. Aug. 22, 2005); *see also Ocean Advocates v. U.S. Army Corps*  
25 *of Eng'rs*, 402 F.3d 846 (9th Cir. 2005). The Army Corps took nearly nine years from the date  
26

1 of the remand to produce the draft EIS, which was released for comment in May 2014. As of the  
2 date of this complaint, the Army Corps has not issued a final EIS or ROD for the BP Dock. In  
3 this lawsuit, Plaintiffs ask this Court to find that the Army Corps has unreasonably delayed the  
4 EIS, the ROD, and the Magnuson Amendment compliance determination for the BP Dock, and  
5 to compel its finalization.

#### 6 JURISDICTION AND VENUE

7 5. Plaintiffs bring this action for review pursuant to the Administrative Procedure  
8 Act (APA), 5 U.S.C. §§ 701–706, seeking a declaratory judgment pursuant to 28 U.S.C. § 2201,  
9 and injunctive relief pursuant to 28 U.S.C. § 2202.

10 6. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal  
11 question jurisdiction) and 5 U.S.C. § 704 (APA).

12 7. Venue is properly vested in this Court under 28 U.S.C. § 1391(b) and (e)(1)  
13 because a substantial part of the events or omissions giving rise to these claims occurred in this  
14 district, and because Plaintiffs reside and maintain their offices in this district.

#### 16 PARTIES AND STANDING

17 8. Plaintiff Friends of the Earth (FoE) is a tax-exempt, 501(c)(3) organization and a  
18 not-for-profit corporation existing under the laws of the District of Columbia with offices in  
19 Washington, D.C. and Berkeley, California and staff located across the country. Founded in  
20 1969, FoE is a membership organization consisting of more than 280,000 members and more  
21 than 4.5 million activists nationwide. FoE is also a member of Friends of the Earth-International,  
22 which is a network of grassroots groups in 74 countries worldwide. FoE has more than 10,000  
23 members in Washington State. FoE's mission is to protect our natural environment, including  
24 air, water, and land, to create a healthier and more just world. FoE utilizes public education,  
25 advocacy, legislative processes, and litigation to achieve its organizational goals. FoE's Oceans  
26

1 program works to protect our oceans—as well as the people who live near and the marine  
2 creatures who reside in oceans—from the threats of oil spills, air pollution, sewage releases, and  
3 unnatural ocean noise. This work includes extensive advocacy related to the Cherry Point region  
4 of Washington. FoE has worked for many years to ensure that the EIS and ROD for the BP  
5 Dock are completed. FoE has encouraged its members and activists to submit tens of thousands  
6 of comments to the Army Corps encouraging it to complete its mandated environmental review  
7 of the BP Dock.

8           9.       Plaintiff Friends of the San Juans (FSJ) is a nonprofit organization dedicated to  
9 protecting and restoring the San Juan Islands and the Salish Sea for people and nature. Founded  
10 in 1979, FSJ represents thousands of members and works with diverse stakeholders, including  
11 citizens, committees, tribal and governmental agencies, and other nonprofit organizations in the  
12 transboundary Salish Sea region. FSJ's members live, work, and recreate throughout the Salish  
13 Sea and share interests in intact shoreline habitats, protective land use regulations and best  
14 management practices, safe shipping, clean and ample water, endangered species protection and  
15 recovery, and safeguarding recreation opportunities in the San Juan Islands. FSJ is based in  
16 Friday Harbor, Washington.

17           10.       FSJ's activities include protection of endangered species; marine research and  
18 habitat restoration; ecological stewardship and conservation; land use and environmental  
19 compliance; and community engagement and education. FSJ's efforts have produced cleaner,  
20 healthier habitats for sensitive species in beaches, parks, and waters; inventories of marine and  
21 nearshore habitat to help rebuild depleted salmon stocks; and increased protections for our  
22 magnificent Southern Resident Killer Whales. In 2001, FSJ was a co-petitioner in the lawsuit  
23 that led to the federal listing of the Southern Resident Killer Whales as an endangered species  
24 under the Endangered Species Act (ESA). The protection and recovery of the Southern  
25

1 Residents continues to be one of FSJ's top priorities, including addressing the impacts to  
2 Southern Residents from commercial shipping such as vessel noise that interferes with the orcas'  
3 ability to communicate and hunt, vessel presence that disrupts foraging behavior, ship strikes that  
4 can cause death, and the risk of a major oil spill that could cause the species' extinction.

5 11. A key priority for FSJ is protecting the integrity of Salish Sea ecosystems through  
6 policy work, reviewing development proposals and permit applications region-wide, and  
7 ensuring compliance with existing laws. This is critical work, and particularly in the San Juan  
8 Islands, no entity has the capacity or expertise to address these issues in FSJ's absence. Every  
9 hour spent by FSJ's staff trying to get the Army Corps to fulfill its long-overdue obligations with  
10 respect to the BP Dock EIS and ROD is an hour not spent on addressing other environmental  
11 threats to our region, the Salish Sea, and local endangered species. FSJ estimates that, since the  
12 Army Corps has failed to complete the court-ordered environmental review, FSJ has had to  
13 devote at least 40 hours of staff time to the BP Dock.  
14

15 12. Plaintiff Evergreen Islands is a small, nonprofit environmental organization (200+  
16 members) based on Fidalgo Island that has been in existence for over 40 years. Its mission is "to  
17 promote, protect, and defend the unique ecosystem involving the saltwater islands of Skagit  
18 County," which include Cypress Island, Fidalgo Island, Guemes Island, Samish Islands, and  
19 many smaller islands. Evergreen Islands' focus is monitoring and supporting the responsible  
20 enforcement of local, state, and national laws that protect the environment, specifically the  
21 environmental protections contained in municipal comprehensive plans and policies, municipal  
22 and county shoreline programs, the Washington State Growth Management Act (GMA), the  
23 Washington State Environmental Policy Act (SEPA), the Washington State Shoreline  
24 Management Act (SMA), Federal Water Pollution Control Act, and the National Environmental  
25 Policy Act (NEPA). Its many successes include not only stopping the production and  
26  
27  
28

1 exportation of xylene at the Marathon Anacortes Refinery (formerly Tesoro), but also the  
2 construction of a Crude-by-Rail oil terminal at the HollyFrontier Refinery (formerly Shell). The  
3 March Point refineries (HollyFrontier/Shell and Marathon/Andeavor/Tesoro) and BP's Cherry  
4 Point refinery pose existential threats to the irreplaceable marine environment in our portion of  
5 the Salish Sea.

6 13. Evergreen Islands' concerns are well founded—the Washington State Department  
7 of Ecology, in its 2015 Vessel Traffic Risk Assessment Final Report, indicated that the  
8 waterways with the highest risk from potential oil loss from vessels are Haro Strait/Boundary  
9 Pass, Rosario Strait, Guemes Channel, and Saddlebag/Huckleberry Pass. March Point straddles  
10 both Padilla Bay (home to the Padilla Bay National Estuarine Research Reserve), and Fidalgo  
11 Bay (home to the Fidalgo Bay Aquatic Reserve). Four oil spills occurred in Fidalgo Bay  
12 between 1991-92. The 1991 spill significantly harmed spawning Fidalgo Bay herring stock and  
13 other forage fish (smelt, sand lance, and herring), and over 300 waterfowl and shorebirds were  
14 killed from direct oiling. Despite cleanup efforts, some oil persisted on intertidal beaches for  
15 several years. On April 2, 2010, an accident at the March Point Tesoro Refinery killed seven  
16 workers. At the time of the incident, a heat exchanger was being brought online when the nearly  
17 forty-year-old piece of equipment catastrophically failed, spewing highly flammable hydrogen  
18 and naphtha which ignited and exploded. In February 2015, the Shell Puget Sound Refinery  
19 took shortcuts in shutting down and decontaminating its east flare system, leading to a release of  
20 chemicals that affected hundreds of people.  
21

22 14. Plaintiffs and Plaintiffs' members regularly use, enjoy, and benefit from the  
23 marine environment of the Salish Sea, including the Puget Sound. Plaintiffs and Plaintiffs'  
24 members also regularly use, enjoy, and benefit from the presence of healthy marine life—  
25 including threatened and endangered species—within that environment for recreational,  
26

1 aesthetic, commercial, scientific, and environmental purposes, such as whale watching, scientific  
2 study, and photography. The ability of Plaintiffs and Plaintiffs' members to pursue these  
3 interests hinges not only on the well-being of threatened and endangered species that live,  
4 migrate, feed, and breed in areas affected by vessel traffic in the Salish Sea, but also on the  
5 health of the marine ecosystem on which these species depend.

6 15. Plaintiffs and their members have for decades committed themselves to protecting  
7 the communities, wildlife, and ecosystems connected with the Salish Sea (which includes Puget  
8 Sound). Plaintiffs and their members are worried about the increased risk of oil spills, and they  
9 fear that any increase in tanker traffic will result in adverse impacts to their recreational,  
10 professional, and property interests.

11 16. Plaintiffs and their members enjoy watching and photographing whales near the  
12 San Juan Islands. As such, Plaintiffs and their members are concerned about harm to the  
13 critically endangered Southern Resident Killer Whales—a species with a remaining population  
14 of only 74 individuals. The BP Dock is located in Southern Resident critical habitat. 50 C.F.R.  
15 § 226.206. This community has suffered significant losses over the past few decades due in  
16 large part to the loss of chinook salmon that make up the bulk of their diet, persistent pollution,  
17 and acoustic and physical disturbances associated with boats and ships. When the National  
18 Marine Fisheries Service (NMFS) listed the Southern Residents as endangered under the ESA,  
19 the agency noted that these whales are also particularly vulnerable to oil spills because they  
20 travel in pods and an entire family group can be lost due to one spill. Their critical habitat  
21 entirely overlaps the routes tankers take through the Salish Sea to call on the BP refinery. NMFS  
22 recently extended its critical habitat determination to include most of the West Coast which BP  
23 tankers transit between Cherry Point and California.  
24  
25  
26  
27  
28

1           17.     The Rivers and Harbors Section 10 permit that the Army Corps issued to BP in  
2 1996 for the North Wing does not incorporate crude oil tanker limits required by law. With the  
3 addition of the North Wing, the refinery is capable of handling more crude oil, or could be  
4 capable of handling crude oil with modifications that would not require additional permitting,  
5 than it was previously. Moreover, by reducing the congestion at the existing terminal, the  
6 construction of a second wing increased the potential berthing capacity of the existing terminal  
7 for tankers carrying crude oil. In fact, eliminating the “bottleneck” at the original terminal was  
8 the primary purpose for seeking the permit.

9           18.     Existing numbers of vessels carrying both crude and refined oil far exceed the  
10 maximum capacity of the dock prior to its expansion in 2001. For instance, the draft EIS  
11 documents an increase in crude oil tanker traffic following construction of the North Wing from  
12 108 vessels in 2000 to 174 vessels in 2010.

13           19.     Plaintiffs have been actively engaged in a variety of educational and advocacy  
14 efforts to protect the Salish Sea from increased vessel traffic and other harmful impacts. Many  
15 of Plaintiffs’ concerns were detailed in comments on the 2014 draft EIS for the BP Dock. The  
16 Army Corps’ delay in discharging its duties affects Plaintiffs’ advocacy efforts. Plaintiffs’  
17 injuries are fairly traceable to the Army Corps’ violations and are redressable by the Court. The  
18 Army Corps’ failure to comply with its statutory duties has caused and is causing Plaintiffs’  
19 members and staff harms connected to their conservation, recreational, scientific, and aesthetic  
20 interests. Because the BP Dock has already been constructed and continues to operate in the  
21 absence of a final EIS, ROD, and Magnuson Amendment determination, the interests of  
22 Plaintiffs and Plaintiffs’ members have been, are being, and will be adversely affected by the  
23 Army Corps’ violations of federal law, as described herein.



22. Defendant United States Army Corps of Engineers is a federal agency within the United States Department of Defense charged with, among other things, issuing permits under Section 10 of the Rivers and Harbors Act, 33 U.S.C. § 403. The Army Corps must comply with NEPA when issuing a Rivers and Harbors Act Section 10 permit for a project. Because the project involves crude oil transport in “navigable waters in the State of Washington east of Port Angeles,” the Army Corps must also ensure that any permit it issues complies with the Magnuson Amendment, 33 U.S.C. § 476.

## I. THE ADMINISTRATIVE PROCEDURE ACT (APA)

24. A reviewing court may compel action if the agency has a duty to act and it has “unreasonably delayed” in discharging that duty. *Id.* § 706(1).

II. NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

25. NEPA, 42 U.S.C. §§ 4321–4370f, is “intended to ensure Federal agencies consider the environmental impacts of their actions in the decision-making process.” 40 C.F.R. § 1500.1(a). It makes environmental protection a part of the mandate of every federal agency. 42 U.S.C. § 4332(1). It requires federal agencies to take environmental considerations into account in their decision-making “to the fullest extent possible.” *Id.* § 4332. NEPA also supplements the existing authority of agencies to allow them to act based on environmental considerations. *Id.* § 4335.

26. The cornerstone of NEPA’s protections is the environmental impact statement (“EIS”). NEPA requires federal agencies to prepare an EIS before undertaking any “major federal action significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C). The EIS requires a detailed, “hard look” at the environmental impact of—and alternatives to—the proposed action. *See id.*

27. Under this Court’s precedent, the Army Corps violated NEPA by failing to prepare a NEPA EIS for the BP Dock. *Ocean Advocates*, 2005 WL 2035053. That failure remains ongoing, sixteen years later.

III. THE MAGNUSON AMENDMENT

28. The Magnuson Amendment, 33 U.S.C. § 476, which was passed in 1977 to address the threat of oil spills in Puget Sound, regulates permits for crude oil transport terminals on Puget Sound. The law prohibits federal agencies from issuing a permit that “will or may result in any increase in the volume of crude oil capable of being handled at” any facility east of Port Angeles, relative to its capability in 1977, unless the crude oil is for in-state consumption.

29. The Magnuson Amendment applies to the Army Corps’ issuance of a permit for the BP Dock. The BP Dock is located east of Port Angeles and provides far more fuel than is

1 used in Washington State. Under this Court's precedent, the Army Corps must issue a formal  
2 determination as to whether the current Rivers and Harbors Act Section 10 permit for the BP  
3 Dock violates the Magnuson Amendment. *Ocean Advocates*, 2005 WL 2035053.

#### 4 STATEMENT OF FACTS

5 30. Built in 1971 with a capacity to handle 100,000 barrels of crude oil per day, BP's  
6 Cherry Point refinery can currently process approximately 250,000 barrels of crude oil per day  
7 on average. It is the largest refinery in Washington State and the third largest refinery on the  
8 U.S. West Coast. While the refinery receives some crude by rail and pipeline, most of the crude  
9 oil is delivered by tankers that transit the Salish Sea.

10 31. In 1992, BP applied for a permit to add a North Wing to the existing Cherry Point  
11 Marine Terminal, which would double the refinery's berthing capacity. During the public  
12 comment period for the permit, the U.S. Fish and Wildlife Service (FWS), Lummi Nation, and  
13 Nooksack Tribe raised concerns about an increase in tanker traffic, the associated increased risk  
14 of oil spills, and potential impacts on endangered species. FWS asked the Army Corps to  
15 complete an EIS to assess increased vessel traffic and cumulative impacts of the BP Dock. In  
16 March 1996, the Army Corps issued a Rivers and Harbors Section 10 permit for the expansion  
17 and made a Finding of No Significant Impact (FONSI), determining that an EIS was not  
18 required.

19 32. Between 1997 and 1999, environmental groups tried to persuade the Army Corps  
20 to reopen the permit to assess the cumulative impacts that the BP Dock would have on vessel  
21 traffic safety and to determine whether the permit violated the Magnuson Amendment. The  
22 Army Corps declined to reconsider or condition the permit. In November 2000, the groups filed  
23 a lawsuit against the Army Corps for failing to complete a NEPA EIS for the BP Dock. Initially,  
24 this Court found in favor of the Army Corps. *Ocean Advocates v. U.S. Army Corps of Eng'rs*,

1 167 F. Supp. 2d 1200, 1216 (W.D. Wash. 2001), *aff'd in part, rev'd in part*, 361 F.3d 1108 (9th  
2 Cir. 2004), *opinion amended and superseded on denial of reh'g*, 402 F.3d 846 (9th Cir. 2005),  
3 and *aff'd in part, rev'd in part*, 402 F.3d 846 (9th Cir. 2005).

4 33. On appeal, the Ninth Circuit Court of Appeals reversed the district court, finding  
5 that the Army Corps' issuance of the Section 10 permit violated NEPA and, potentially, the  
6 Magnuson Amendment, 33 U.S.C. § 476. *Ocean Advocates v. U.S. Army Corps of Eng'rs*, 402  
7 F.3d 846 (9th Cir. 2005). The Ninth Circuit remanded the case to the district court with  
8 instructions to remand to the Army Corps so that the Army Corps could (1) prepare an EIS that  
9 considers the impact of reasonably foreseeable increases in tanker traffic and (2) reevaluate the  
10 dock extension's potential violation of the Magnuson Amendment. *Id.* at 875.

11 34. On remand, the district court directed the Army Corps to prepare an EIS for the  
12 BP Dock consistent with the Ninth Circuit's opinion. *Ocean Advocates v. U.S. Army Corps of*  
13 *Eng'rs*, No. C00-1971L, 2005 WL 2035053 (W.D. Wash. Aug. 22, 2005). The court also  
14 ordered the Army Corps to "revoke the [Rivers and Harbors Section 10] permit or place  
15 conditions on the operation of the dock extension if necessary to ensure compliance with the  
16 law." *Id.* at \*2. However, the Corps neither revoked the permit nor placed any conditions on the  
17 operation of the dock during the sixteen years that the project has been operating in violation of  
18 NEPA.

19 35. On August 16, 2006, the Army Corps published its intent to prepare a draft EIS  
20 for the BP Dock in the Federal Register. 71 Fed. Reg. 47,191 (Aug. 16, 2006). In the notice, the  
21 Army Corps stated that it expected to publish the draft EIS in Fall 2008. *Id.* at 47,192. The  
22 Army Corps, however, took nearly nine years from the date of the remand to produce the draft  
23 EIS, which was released for comment in May 2014. The public comment period for the draft  
24 EIS closed in August 2014. Plaintiffs submitted extensive comments on the draft EIS,  
25  
26

1 demonstrating that continued operation of the dock without vessel limits violated the Magnuson  
2 Amendment. The draft EIS calculated the maximum capacity of the existing South Wing for  
3 crude oil, in the absence of the North dock expansion, at 138 vessel calls per year. Shortly after  
4 the North dock was constructed, crude oil vessel calls increased well above these pre-expansion  
5 maximums in every year after 2001, reaching a high of 191 vessel calls in 2007. The draft EIS  
6 calculates a theoretical maximum capacity of up to 315 crude oil vessel calls at the South Wing  
7 when both terminals are in operation. In other words, the draft EIS documents that construction  
8 of the North Wing increased the maximum berthing capacity of the South Wing from 138 to 315  
9 crude oil vessels annually. Such an expansion violates the Magnuson Amendment unless it can  
10 be shown that the crude is to be refined for in-state consumption. In 2014, available data showed  
11 that only 26 percent of the crude oil delivered to BP's Cherry Point facility was used for in-state  
12 consumption.

13  
14 36. Since 2014, Plaintiffs have attended several meetings and engaged in  
15 correspondence with the Army Corps regarding the BP Dock EIS and ROD. During the July  
16 2014 hearings on the draft EIS, the Army Corps assured attendees that the final EIS would be  
17 completed by December 2014. In December 2015, a year after the Army Corps missed its self-  
18 imposed deadline, Plaintiffs wrote to the Army Corps, urging completion and publication of the  
19 final EIS within 60 days. The Army Corps responded in a February 2016 letter: "We are  
20 working diligently on reviewing and refining preliminary drafts of the Final EIS with the goal of  
21 having it published in the spring of 2016."

22  
23 37. Plaintiffs sent the Army Corps a letter on May 26, 2021, demanding that the  
24 Army Corps complete the court-ordered and long-overdue BP Dock EIS. Though not statutorily  
25 required, Plaintiffs notified the Army Corps of Plaintiffs' intent to file an unreasonable delay  
26 lawsuit if the Army Corps persisted in its delay. In a letter to Plaintiffs dated June 15, 2021, the

Chief of the Army Corps' Regulatory Branch asserted that the Army Corps cannot complete the EIS and ROD until NMFS completes Endangered Species Act Section 7 consultation for the BP Dock. This consultation has been pending since 2014. As of the date of this complaint, the Army Corps has not issued a final EIS or ROD for the BP Dock, nor has ESA consultation been finalized. However, NMFS has represented to Plaintiffs that NMFS will issue a biological opinion for the project by September 30, 2021.

### CAUSE OF ACTION

#### I. THE ARMY CORPS HAS UNREASONABLY DELAYED FINALIZING THE BP DOCK EIS AND ROD IN VIOLATION OF THE APA.

38. Plaintiffs reallege, as if fully set forth herein, every allegation contained in the preceding paragraphs.

39. The Army Corps took nearly nine years from the date of remand to produce the draft EIS. It has been seven years since the comment period for the draft EIS closed and the Army Corps has not produced a final EIS or ROD.

40. Defendant's unreasonable delay and failure to act violates the APA, which directs agencies to "within a reasonable time ... conclude a matter presented to it," 5 U.S.C. § 555(b), and which mandates that "[p]rompt notice shall be given of the denial in whole or in part of a written application, petition, or other request of an interested person made in connection with any agency proceeding." *Id.* § 555(e).

41. This Court is authorized to review Defendant's unreasonable delay and failure to act under the APA. 5 U.S.C. §§ 551(13), 702. The APA further mandates that the Court shall "compel agency action unlawfully withheld or unreasonably delayed." *Id.* § 706(1).

### REQUEST FOR RELIEF

Based on the foregoing, Plaintiffs request the following relief:

- 1 A. Adjudge and declare that Defendant Army Corps' failure to complete the BP  
2 Dock EIS and issue a ROD, including a determination under the Magnuson  
3 Amendment, violates the APA;
- 4 B. Order Defendant Army Corps to issue its Final Environmental Impact Statement  
5 and Record of Decision, including a determination for compliance with the  
6 Magnuson Amendment, for the BP Dock within 60 days of NMFS's issuance of  
7 its biological opinion;
- 8 C. Retain jurisdiction of this matter until Defendant Army Corps has fulfilled its  
9 legal and court-ordered obligations as set forth in this Complaint;
- 10 D. Award Plaintiffs their reasonable fees, expenses, costs, and disbursements,  
11 including attorneys' fees associated with this litigation; and  
12
- 13 E. Grant any further relief the Court deems just and proper.

14 DATED: September 24, 2021.

15 Respectfully submitted,

16 /s/ Marisa Ordonia

17 MARISA C. ORDONIA, WSBA No. 48081

18 JAN E. HASSELMAN, WSBA No. 29107

19 Earthjustice

20 810 Third Avenue, Suite 610

21 Seattle, WA 98104-1711

22 (206) 343-7340 | Phone

23 (206) 343-1526 | Fax

24 mordonia@earthjustice.org

25 jhasselman@earthjustice.org

26 *Attorneys for Plaintiffs*